

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

In the Matter of)	
)	
Waiver of the Rules of the Federal)	FO Docket Nos. 91-171/91-301
Communications Commission Relating)	
to Implementation of the Emergency)	Socorro Satellite Systems
Broadcast System)	

RECEIVED

To: Chief, Technical & Public Safety Division, Enforcement Bureau

SEP 27 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**PETITION FOR WAIVER OF
EMERGENCY ALERT SYSTEM REQUIREMENTS**

Socorro Satellite Systems (hereinafter "Petitioner"), by its attorneys, respectfully requests a waiver of Section 11.11(a) of FCC Rules, 47 U.S.C. § 11.11(a). Specifically, Petitioner seeks a 36-month waiver of the requirement that Multipoint Distribution Service operators ("wireless cable system operators") implement Emergency Alert System ("EAS") equipment and procedures by October 1, 2002. Section 11.11(a) requires small wireless cable television systems serving fewer than 5,000 subscribers either to provide the national level EAS message on all programmed channels - including the required testing - or to install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and visual messages on at least one programmed channel by October 1, 2002.

As set forth below, circumstances exist wherein EAS-compliant technology compatible with Petitioner's wireless cable television system facilities is not yet commercially available at a financially reasonable expense, and may not be available for an undetermined period of time. Installation at

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current prices threatens the financial viability of Petitioner's system. Furthermore, Petitioner is in the process of eliminating program delivery services from its wireless system, converting its subscribers to *satellite signal reception instead*. For the reasons shown herein, Petitioner requests a temporary, 36-month waiver of the EAS requirements, and particularly of the requirement that EAS implementation be achieved by October 1, 2002.

Petitioner relies herein upon the mechanism for waiver established in the Second Report and Order in FO Docket Nos. 91-301 and 91-171, 12 FCC Rcd at 15513, n.59 (1997) ("2nd Report and Order"), and confirmed in the Report and Order in EB Docket No. 01-66 FCC 02-64 (by the Commission), released February 26, 2002 ("Report and Order"). As demonstrated herein, good cause exists for this waiver because it is economically and technically infeasible for Petitioner to comply with the October 1, 2002 deadline for EAS implementation.^{1/}

Background and Facts

1. The FCC has adopted rules to implement Section 624(g) of the Communications Act, as amended by the Cable Act of 1992, fulfilling the Congressional directive that every wireless cable television operator ensure that viewers of video programming on cable systems are afforded the same

^{1/} "The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest." WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969). Waiver of a Commission rule is appropriate where (1) the underlying purpose of the rule will not be served, or would be frustrated, by its application in a particular case, and grant of the waiver is otherwise in the public interest, or (2) unique facts or circumstances render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, and there is no reasonable alternative.

information as is afforded by the emergency broadcasting system.^{2/} The Commission began by replacing the Emergency Broadcast System with the Emergency Alert System ("EAS").^{3/} Subsequently, the Commission extended the EAS requirements to wireless cable systems. At the same time it declined to provide an exemption for small systems or to adopt a specific waiver policy.^{4/} However, the Commission did establish a policy whereby it would receive requests for individual relief, to be considered on a case-by-case basis, and to be granted in appropriate circumstances upon sufficient showing of need. That policy has been confirmed as a means of relief for small system operators who make a showing of financial hardship.^{5/} The Commission has indicated that requests for waiver are required to contain at least the following:

1. justification for the waiver;
- 2) information about the financial status of the entity, such as a balance sheet and income statement for the past two years (audited, if available);
- 3) the number of other entities that serve the requesting entity's coverage area and that are expected to install new EAS equipment; and
- 4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.^{6/}

^{2/} See Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, §16(b), 106 Stat. 1460 (1992).

^{3/} Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 1786 (1994), reconsideration granted in part, denied in part, Memorandum Opinion and Order, 10 FCC Rcd 11494 (1995).

^{4/} Second Report and Order, 15 FCC Rcd 15503, at ¶19 and ¶38 (1997)

^{5/} Report and Order, at ¶73.

^{6/} Id.

2. Petitioner has made efforts to assess what steps it would need to take to meet the October 1, 2002 deadline, and has determined that compliance is presently unfeasible due to the unavailability of equipment to facilitate compliance with Section 11.11(a) in an economically reasonable manner. Specifically, Petitioner has procured information from its engineering consultants concerning the cost of equipment. Petitioner has sought guidance from its advisors and industry colleagues to find affordable solutions for small, independent wireless cable operators. However, no satisfactory solution has been identified that would enable Petitioner to become EAS compliant by October 1, 2002.

Petitioner's System and EAS Cost Estimates

3. Petitioner is a wireless cable television system operator providing programming services to approximately 200 subscribers from a transmitter site located in Socorro, New Mexico, pursuant to the FCC authorizations listed below:

<u>Transmission Site</u>	<u>Service</u>	<u>Channel</u>	<u>Call Sign</u>	<u>Licensee</u>
Socorro, NM	MDS	H Group	WNTK750	Petitioner
Socorro, NM	MDS	E Group	WMI416	Petitioner
Socorro, NM	MDS	F Group	WMI417	Petitioner
Socorro, NM	ITFS	D Group	WNC413	New Mexico Tech
Socorro, NM	ITFS	C Group	WNC841	Socorro Consolidated Schools

Petitioner is accordingly in the category of wireless cable television systems serving fewer than 5,000 subscribers, all of whom reside in a small, rural area near Socorro, New Mexico.

4. In adopting the EAS requirements, the FCC estimated that the cost of becoming capable of providing audio and video EAS messages on one channel, along with an audio alert message and a video interrupt on all programmed channels, would be approximately \$6,000 to \$10,000 per headend for *coaxial* cable systems.^{7/} The FCC furthermore estimated that the cost per subscriber for a 1,000 subscriber system would be approximately twelve cents per month over a seven year period, and that the cost per subscriber for a 100 subscriber system would be \$1.20 per month over a seven year period.^{8/} At the same time the Commission recognized that smaller systems do not have access to the financial resources, purchasing discounts and other efficiencies of larger companies. In this context the Commission chose to make no distinction between those cable systems which are affiliated with larger companies and those which are not.^{9/}

5. The Commission's estimates are born out by Petitioner's own research, calculated per transmission site rather than per headend. Petitioner's EAS equipment costs are quoted at \$4,113. The quote does not include costs of installation, required hardware, shipping and state and local taxes, all of which could add another \$1,000 to the purchase. While Petitioner has investigated financing possibilities for the purchase, its efforts have proven unsuccessful because of leverage restrictions placed upon the system operation by Petitioner's existing lenders.

6. Assuming that favorable financing terms were to become available, Petitioner estimates that it would have to spend about \$6,800 over seven years to implement EAS. The cost of EAS is

^{7/} Id., at ¶23.

^{8/} Id.

^{9/} Id., at ¶26. Petitioner's affiliation with a larger company, Socorro Electric Cooperative, Inc., is therefore not a subject for consideration in this matter.

too great a burden to place upon the small wireless system, whose entire operation cumulatively showed a loss of \$62,456 in the year ending March 31, 2001 and a loss of \$167,548 in the year ending March 31, 2002.^{10/} The financial burden of EAS implementation would have a severe impact on the operation, which is struggling to maintain service to a dispersed configuration of rural residents. At the same time Petitioner is gradually transitioning its subscribers to satellite-delivered programming. Petitioner's wireless cable channels will eventually be used only for the transmission of data services such as Internet.

Alternative Sources of Emergency Alerting, and Types and Frequency of Risks

7. Petitioner carries on its system all of the local broadcasting affiliates for ABC, CBS, NBC, FOX and PBS. All of those stations carry weather crawlers and are active in interrupting programs to show weather and other emergency developments throughout Petitioner's service area. Petitioner's wireless cable subscribers are served by at least one 24-hour news network (CNN), making national breaking news available to all subscribers on the basic tier. The system also carries The Weather Channel 24 hours a day, which conveys local weather information and updates, as well as national alerts. Finally, local and county Civil Defense systems are installed to cover the communities served by Petitioner. No other MDS or cable television systems serve the communities served by Petitioner, so there are none that would be expected to install new EAS equipment in Petitioner's service areas.

8. The main risk to Petitioner's served communities that involves emergency alerting is the occasional weather emergency. Tornadoes, hail, floods and wildfires are the common hazards.

^{10/} Petitioner's unaudited adjusted income statement for fiscal years 2000, 2001 and 2002 is attached hereto, as well as a balance sheet for 2002.

Petitioner strives to keep the systems operating during times of danger so that viewers can tune into local broadcast stations for specific alert information. Many of Petitioner's subscribers live on working farms and maintain constant views of developing local weather. They are well aware of the hazards of severe weather systems and of the precautions to be taken to mitigate damage and avoid personal injury. Many of Petitioner's customers own their own weather radios.

9. The likelihood of the occurrence of an unusual or surprise national emergency that would directly affect Petitioner's subscribers is remote. The service area is located about 135 miles from the U.S. border with Mexico. The area is not located in close proximity to a nuclear reactor or major airport. Nor are any major prisons, reservoirs, hospital, military or weapons facilities installed nearby. It is therefore likely that if a national emergency were to occur, Petitioner's subscribers would be informed by the existing alerting systems and by the television programming that Petitioner now provides. For this reason it is in the subscribers' interests that Petitioner's operations remain in service, at low monthly rates, and that they not be compromised by the financial burden of a specially installed EAS system.

Justification for Waiver

10. As demonstrated herein, Petitioner's compliance with the EAS by October 1, 2002 is not reasonably achievable because it is technically and economically infeasible at the present time, and because when the wireless cable system is used entirely for data transmission and is no longer used for programming, Petitioner will not be required by Section 11.11 to provide EAS service. If for any reason Petitioner's plans change and it retains programming services, Petitioner will work closely

with suppliers and programmers to find EAS solutions for use by small wireless cable systems, including FCC-certified decoder-only units, recently approved by the Commission in its Report and Order, should such units become available on the market. Petitioner remains willing to install compliant EAS equipment should its service offerings so require. To do so by the October 1, 2002 deadline, however, would require an almost \$7,000 expenditure and place Petitioner's respective operations at serious business risk. The cost of EAS will be reduced as alternative small system solutions are adopted. Petitioner and its customers will benefit if Petitioner's required installation of EAS is postponed until such time.

11. Grant of Petitioner's request for a waiver of Section 11.11(a) is in the public interest. The unique and unusual circumstances surrounding the Petitioner's inability to comply with the implementation deadline is due to some of the very circumstances which were contemplated by the Commission as being grounds for relief from EAS obligations. Special consideration is warranted under the circumstances presented, which, while to a degree is common among small systems, have been demonstrated herein to be uniquely applicable to Petitioner's operation and efforts in this matter.

12. Enforcement against Petitioner would threaten the ongoing viability of Petitioner's 200-subscriber wireless cable television system, which is located in a very rural area of the State of New Mexico. Petitioner consistently attempts to offer the best service possible to its subscribers, some of whom would otherwise not receive local programming and other services in the remote areas where they reside. In this case, Petitioner requests the opportunity to continue to provide the high quality of service that it presently offers to its customers, without the risk of jeopardy resulting from the high cost of EAS implementation.

CONCLUSION

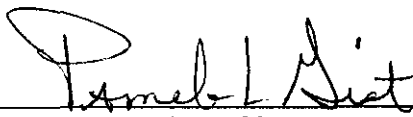
For the reasons explained, Petitioner requests that it be relieved of the obligation to provide EAS, and in particular, that it be granted a temporary, 36-month waiver of the October 1, 2002 date for commencement of compliance with Section 11.11(a) of the FCC's rules at the systems served by the transmitter facilities at Socorro. The Petitioner's showing herein is consistent with the requirements for relief set forth in the FCC's Report and Order in this matter. Furthermore, the public interest benefit of such grant equals or exceeds that which the Commission has found in other instances to be sufficient for waiver of the EAS requirements. Accordingly, Petitioner requests that a waiver be granted as proposed.

The Commission may contact Lupe Vega, Manager, Socorro Satellite Systems, 215 E. Manzanares Avenue, Socorro, New Mexico 87801, phone:(505) 835-0560, with any questions regarding this request. Please direct a copy of any written communications to Petitioner to Lukas, Nace, Gutierrez & Sachs, Chtd., Attention Pamela L. Gist, Esq., 1111 19th Street N.W. Suite 1200, Washington, D.C. 20036; Phone: (202) 828-9473; Fax: (202) 828-8408; Email: pgist@fcclaw.com.

Respectfully submitted,

SOCORRO SATELLITE SYSTEMS

By: _____



Pamela L. Gist
Its Attorney

Date: September 27, 2002

Lukas, Nace, Gutierrez & Sachs, Chartered
1111 19th Street N.W., Suite 1200
Washington, D.C. 20036
Ph# 202-857-3500

Socorro Satellite Systems

	Year Ending 3/31/2002	Year Ending 3/31/2001	Year Ending 3/31/2000
Revenue	414,405	237,614	272,562
Cost of Goods Sold	<u>-</u>	<u>64,760</u>	<u>27,843</u>
Gross Profit	414,405	172,854	244,719
General and Administrative Expenses	<u>581,953</u>	<u>235,310</u>	<u>212,056</u>
Net Income (Loss)	(167,548)	(62,456)	32,663

SOCORRO SATELLITE SYSTEMS
Balance Sheet
As of March 31, 2002

	Mar 31, 02
ASSETS	
Current Assets	
Checking/Savings	
First State Bank	17,255.71
Petty Cash	200.00
Wells Fargo-Magdalena	5,547.66
Total Checking/Savings	23,003.37
Accounts Receivable	
Accounts Receivable	
Allowance For Uncollectible A/C	-30,252.74
Accounts Receivable - Other	78,287.42
Total Accounts Receivable	48,034.68
Total Accounts Receivable	48,034.68
Total Current Assets	71,038.05
Fixed Assets	
Computer Equipment	53,902.23
Equipment	23,549.56
Equipment-Tower	16,960.00
Equipment Depr	-40,569.33
Furniture & Fixtures	7,707.41
Land and Plant	80,246.86
Leased Equipment	
Accum Depreciation-Furn & Equip	-15,694.50
Accum Depreciation - Leased Eq	-82,083.63
Leased Equipment - Other	482,415.00
Total Leased Equipment	384,636.87
Total Fixed Assets	526,433.60
Other Assets	
Inventory	48,541.00
Total Other Assets	48,541.00
TOTAL ASSETS	646,012.65
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Accounts Payable	
Accounts payable-SEC	616,037.75
Total Accounts Payable	616,037.75
Other Current Liabilities	
Sales Tax Payable	2,132.36
Subscriber Deposits	8,950.00
Total Other Current Liabilities	11,082.36
Total Current Liabilities	627,120.11
Total Liabilities	627,120.11
Equity	
Opening Bal Equity	283,284.03
Retained Earnings	-193,570.27
Net Income	-50,821.22
Total Equity	18,892.54
TOTAL LIABILITIES & EQUITY	646,012.65

DECLARATION

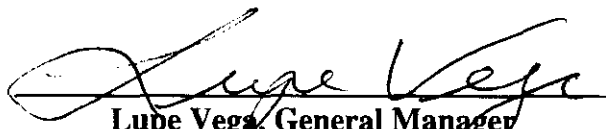
I, Lupe Vega, hereby state and declare:

**1. I am General Manager of the Socorro Satellite Systems,
wireless cable television operator and petitioner herein.**

**2. I am familiar with the facts contained in the foregoing
Petition for Waiver of Emergency Alert System Requirements , and
I verify that those facts are true and correct to the best of my
knowledge and belief, except that I do not and need not attest to
those facts which are subject to official notice by the Commission.**

**I declare under penalty of perjury that the foregoing is true and
correct.**

Executed on the 24th day of September, 2002.


Lupe Vega, General Manager

CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chtd., do hereby certify that I have on this 27th day of September, 2002, sent by hand-delivery, a copy of the foregoing PETITION FOR WAIVER OF EMERGENCY ALERT SYSTEM REQUIREMENTS to the following:

Joseph P. Casey, Chief
Technical & Public Safety Division
Enforcement Bureau
445 12th St., S.W., Room 7-A843
Federal Communications Commission
Washington, D.C. 20554


Loren Costantino